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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/812,505

03/29/2004

Juergen Kelnhofer

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21553

7590

04/07/2006

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EXAMINER

HOLZEN, STEPHEN A

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/812,505	<b>Applicant(s)</b> KELNHOFER ET AL.	
	<b>Examiner</b> Stephen A. Holzen	<b>Art Unit</b> 3644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/29/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of species "b" in the reply filed on 1/20/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Upon allowance of a generic claim the examiner will automatically rejoin the withdrawn claims.
2. Claims 1-15 are pending
3. Claims 6 and 13 are withdrawn.
4. Claims 1-5, 7-12, 14-15 are pending.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
6. Claims 1-5, 7-12 and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims fail to conform to proper US standards. The examiner cannot tell where the preamble ends and the claim body begins. Where is applicant's transitional phrase (such as "comprising")? The claim is indefinite where the examiner cannot properly determine what portions of the claim are "limitations" and what portions of the claim are "preamble".

Re - Claim 3: It is indefinite to use the word "preferably".

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Re – Claim 12: It is indefinite to say that a flap is formed “by a prism”. How can a prism make a flap? The examiner believes that the applicant is attempting to limit the shape of the flap and not that the shape literally “makes” the flap. Correction is required.

***Claim Rejections - 35 USC § 102***

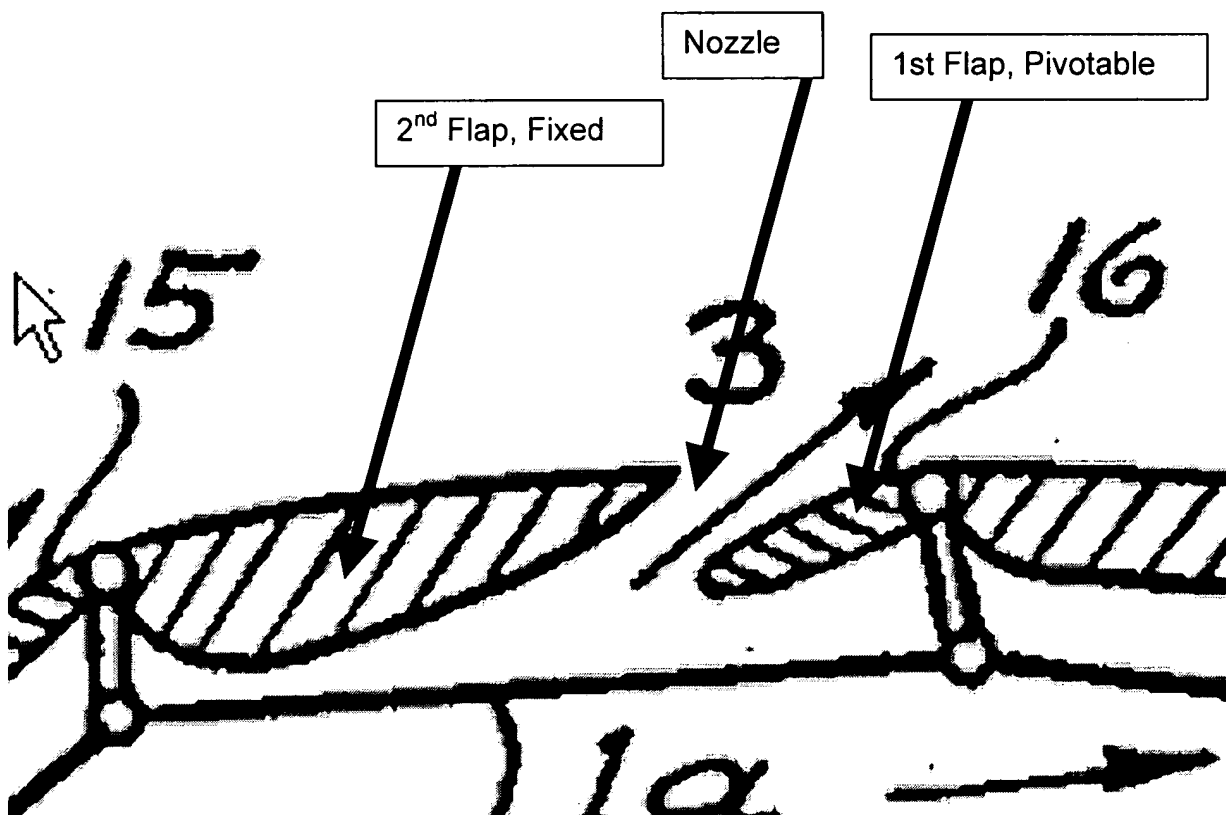
7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, 8-11, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Alfaro (1,810,693).

Figure 5 to Alfaro discloses



A first flap (16) that is pivoted at a trailing edge, a second fixed flap (not numbered) journaled at its front edge and a nozzle between the first and second flap (3). Figure 5 illustrates a front opening in the lower face of the airfoil and exits provided with pivoting shutters (15, 16 and 17). The shutters are operated by a linkage (18, 19 and 20), which adjusts the shutters to a desired position.

The applicant has not claimed that the first and second flaps need to be pivotable, only that they be journaled. The examiner asserts that Flap #2 is journaled with shutter #15. Should the applicant amend the claims such that the second and first flap be capable of pivoting, the examiner would withdraw this rejection.

Furthermore the examiner asserts that the first and second flaps do overlap. It is clear from Alfaro reference that the 1<sup>st</sup> and 2<sup>nd</sup> flap are intended to create a flap, continuous fluid surface and the only way to do this (given disclosure shutter configuration) would be to overlap the 1<sup>st</sup> flap with the 2<sup>nd</sup> flap. But for the overlapping sections, the surface would not have a smooth fluid surface.

Re – claim 2, 3, 4, and 5: these claims are functional in nature and do not limit the apparatus claim 1 in any structural manor. The minor structural limitations present in these claims are anticipated by Alfaro's figure 5.

Re – Claim 8, 9 and 10: Alfaro teaches the outer surfaces form part of the outer surface configuration of the aircraft body, and a leading edge having a semicircular curvature, where the nozzle (3) is formed by the shapes of the flaps.

Re – Claim 11: The phrases “inner valve flap” and “outer valve flap” does not limit the first or second flaps to be located in a specific location, only that one has an inner portion and one has an outer portion.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Alfaro in view of Rhines (3,387,804).

Alfaro does not specifically disclose 1<sup>st</sup> and 2<sup>nd</sup> facing surfaces having a concave shape. Rhines teaches however that it is well known to use concave shapes to make facing surfaces (see Figure 1).

It would have been obvious to select a known shape for reducing the manufacturing costs associated with the flaps. The court has held that the shape of the claimed device is design choice, which a person of ordinary skill would have found obvious absent persuasive evidence that the particular shape of the claimed device was significant. (See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

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11. Claim 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Alfaro in view of Maher (3,740,006).

Alfaro does not disclose the shapes that are claimed by applicant. Mayer does however teach that prisms are well known shapes from which to fashion aircraft flaps. It would have been obvious to select a known shape for reducing the manufacturing costs associated with the flaps.

The court has held that the shape of the claimed device is design choice that a person of ordinary skill would have found obvious absent persuasive evidence that the particular shape of the claimed device was significant. (See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 571-272-6903. The examiner can normally be reached on M-F 8:30-5:00.

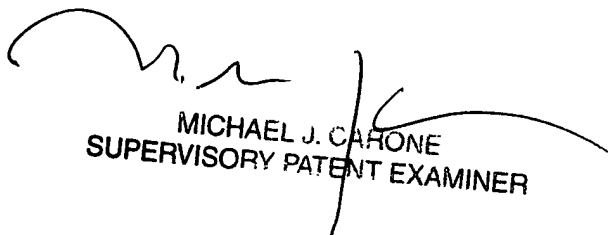
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER